

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: Mid River Marine Service and Storage, Inc. North Liberty, Iowa Public Water Supply Facility No. 5252202	ADMINISTRATIVE ORDER NO. 2012-WS-05
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**TO: Jason David Chase, President
Mid River Marine Service and
Storage, Inc.
346 Aaron Court, P.O. Box 252
Swisher, Iowa 52338**

I. SUMMARY

This administrative consent order (Order) is issued to Mid River Marine Service and Storage, Inc. (Mid River) by the Iowa Department of Natural Resources (Department). This Order is issued due to Mid River's failure to comply with the Department's requirements for correction of coliform bacteria and nitrate monitoring violations, non-acute total coliform bacteria maximum contaminant level (MCL) violations, failure to submit proof of public notification, and failure to hire a certified operator. This Order requires Mid River to pay an administrative penalty of \$8,720.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Cecilia Naughton, Environmental
Specialist
Water Supply Operations Section
Iowa Department of Natural Resources
401 SW 7th, Suite M
Des Moines, Iowa 50309-4611
Ph: 515/725-0289

Relating to legal requirements:

Diana Hansen, Attorney at Law
Legal Services Bureau
Iowa Department of Natural Resources
502 E. 9th Street
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Coliform Bacteria Monitoring Violations

5. This facility owner failed to take a coliform bacteria sample on numerous dates and was notified of coliform bacteria monitoring violations by notice of violation (NOV) letters. The NOV's and public notice instructions sent with the letter additionally advised the facility owner that public notification was required to be given and that proof of public notice was required to be submitted to the Department. The Department has not received proof that public notice for these violations was given. The following are statements of fact regarding coliform bacteria monitoring:

a. On February 4, 2008, an NOV letter was issued by the WSOS to the facility owner for a quarterly coliform bacteria monitoring violation. Public notice was required for the violation as stated in the NOV letter. The WSOS did not receive proof that public notice was given.

b. On October 21, 2008, an NOV letter was issued by the WSOS to the facility owner for a quarterly coliform bacteria monitoring violation. Public notice was required for the violation as noted in the NOV letter. The WSOS did not receive proof that public notice was given.

c. On January 20, 2009, an NOV was issued by the WSOS to the facility owner for a quarterly coliform bacteria monitoring violation. Public notice was required for the violation by the NOV letter. The WSOS did not receive proof of public notification from this PWS that public notice had been given.

d. On August 25, 2009, an NOV letter was issued by the WSOS to the facility owner following a non-acute coliform bacteria MCL violation. The NOV letter was issued for a monitoring violation due to failure to take the required five coliform bacteria samples in July and failure to take the required four repeat samples for the positive coliform bacteria samples in June.

e. On August 26, 2009 a revised permit was issued requiring that one coliform bacteria sample be collected and tested per month. The cover letter also noted that this facility was required to take five routine samples in September 2009 for the positive samples taken in June 2009.

f. On October 27, 2009, an NOV letter was issued by the WSOS to the facility owner for a monitoring violation for failure to take the required September 2009 coliform bacteria sample.

g. On November 24, 2009, an NOV letter was issued by the WSOS to the facility owner for a monitoring violation for failure to take the required October 2009 coliform bacteria sample.

h. On July 20, 2010, an NOV letter was issued by the WSOS to the facility owner for a monitoring violation for failure to take the required June 2010 coliform bacteria sample and the annual nitrate sample.

i. On August 23, 2010, an NOV letter was issued by the WSOS to the facility owner for a monitoring violation for failure to take the required July 2010 coliform bacteria sample.

j. On September 22, 2010, an NOV letter was issued by the WSOS to the facility owner for a monitoring violation for failure to take the required August 2010 coliform bacteria sample. On

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compliance. The NOV letter also advised this facility that it had failed to take a triggered source water sample within 24 hours of notification of the positive routine sample.

v. By a letter dated October 1, 2012, the WSOS informed this facility that it had received positive total coliform bacteria results for a sample collected on September 28, 2012. The letter required this facility to collect four repeat samples and a triggered source water sample within 24 hours of notification by the Department. The letter additionally required this facility to collect five routine samples in October 2012. By a letter dated November 19, 2012, the WSOS notified this facility that it had incurred a monitoring violation for failure to collect and report five routine coliform bacteria samples by October 31, 2012.

Coliform Bacteria MCL Violation

6. On June 30, 2009, the WSOS issued the facility owner an NOV letter due to receipt of a Non-Acute MCL violation for total coliform bacteria. On July 1, 2011, the WSOS issued the facility owner an NOV letter for a Non-Acute MCL violation for total coliform bacteria. The NOV letters and public notice instructions sent with the NOV letters advised the facility owner that public notification was required to be given for these MCL violations and that proof of giving public notice was required to be furnished to the Department. The WSOS did not receive proof of providing public notice of the MCL violations from the facility owner.

Nitrate Monitoring and Reporting

7. The current water supply operation permit issued for this PWS on December 30, 2011 requires annual nitrate monitoring. Annual nitrate monitoring was required for this facility in the prior permits also. Nitrate samples are required to be analyzed at a certified laboratory. The WSOS notified Mid River's owner of nitrate monitoring violations through NOV letters. The NOV letters and public notice instructions sent with the letters advised the facility owner that public notification was required to be given for the nitrate monitoring violations and that proof of giving public notice was required to be furnished to the Department. The Department has not received proof that public notice for these violations were given. The following are the statements of fact regarding nitrate monitoring:

a. On October 21, 2008, the WSOS issued an NOV to the owner of Mid River for an annual nitrate monitoring violation. The NOV letter required that public notice be given. The WSOS did not receive any proof of public notice for this facility by the facility owner concerning the violation.

b. On June 3, 2010, the WSOS sent a reminder notice to the facility owner informing him that the nitrate sample was due by June 30, 2010. On July 20, 2010, the WSOS issued an NOV to the owner of Mid River for an annual nitrate monitoring violation for failure to take the annual nitrate sample by the June 30, 2010 due date. Public notice was required for this monitoring violation. The WSOS did not receive proof of providing public notice for this facility from the facility owner for this violation.

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Public Notice

15. The WSOS sent this facility owner NOV letters for failure to monitor for coliform bacteria and nitrate and for coliform bacteria MCL violations as detailed above in this Order. The NOV letters and public notice instructions sent with the letters advised the facility owner that public notification was required to be given for the violations and that proof of giving public notice was required to be furnished to the Department by the facility owner for the violations. The WSOS did not receive proof of providing public notice of the violations from the facility owner.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the PWS program. Iowa Code section 455B.171 defines a PWS as a system for the provision of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of PWS systems and to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act. The Commission has the authority to adopt rules relating to monitoring, record keeping, and reporting requirements for any PWS. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. Rule 567 IAC 40.2(455B), further defines PWS by defining "community water system" as a PWS which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other PWS. This facility is a transient noncommunity water system.

3. Subrule 567 IAC 41.2(1) requires a transient noncommunity water system to be sampled for coliform bacteria at least once per calendar quarter. More frequent sampling may be required and was required by the revised water supply operation permit issued for this facility on August 26, 2009. When positive results are obtained in a routine sample, additional follow-up sampling is required. Subparagraph "c" (1) of the subrule requires that bacterial samples must be collected at sites which are representative of water throughout the distribution system, according to a written sampling plan that meets the criteria of the subparagraph.

4. Subrule 83.1(3) requires the samples to be analyzed for coliform bacteria at a certified laboratory. Subrule 42.4(1) requires that the analytical results be reported to the Department within ten days after the test. Subrule 42.5(1) requires a PWS system to retain records of bacteria analyses of its water supply for a period of five years. This facility has had repeated coliform bacteria monitoring violations, as stated above in Section III. Statement of Facts.

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have a certified operator in direct responsible charge of the treatment and distribution systems, in accordance with 567—Chapters 40 through 44 and 81. Any TNC which uses chlorine dioxide as a disinfectant or oxidant must have a certified operator in direct responsible charge of the system, pursuant to 567—Chapter 81. The department may require any TNC to have a certified operator in direct responsible charge.

Subrule 567 IAC 81.2(3) provides as follows.

The operator-in-charge shall hold a certificate of the same classification of the plant or water distribution system and of equal or higher grade than the grade designated for that plant or distribution system.

10. The Department can require a transient noncommunity PWS system to hire a certified operator through the permit issued for the PWS. By a revised permit issued on October 20, 2010, the Department required this facility to hire and retain a certified operator by April 15, 2011. The facility did not hire a certified operator and has been operating without a properly certified operator since April 15, 2011.

Public Notification of Violations

11. Subrule 567 IAC 42.1(4) requires the owner or operator of a PWS system which fails to perform monitoring required by rule to notify persons served by the system within three months. Public notice is also required for acute and non-acute total coliform bacteria MCL violations under 567 IAC 42.1(2) and (3). Noncommunity systems may provide public notice by continuous posting in conspicuous places within the area served by the system. The notice is required to provide a clear and readily understandable explanation of the violation, the steps the system is taking to correct the violation, and include the telephone number of the owner, operator, or designee of the system as a source of additional information. Subrule 567 IAC 42.4(1), paragraph "c", provides that the PWS shall submit a representative copy of the public notice to the Department within ten days of completion of the notice. No public notice has been submitted for any violation. The owner of Mid River did not comply with the public notice requirements for failure to monitor and for MCL violations as stated above in Section III. Statement of Facts.

V. ORDER

THEREFORE, the Department orders Mid River to comply with the following provision:

1. You are required to conduct all monitoring and reporting required by the permit issued for this facility.

2. You are required to sample this PWS at least once per month for coliform bacteria from April 15 through October 15, submit the results to a laboratory certified for coliform bacteria analysis, timely report the results to the Department, and maintain the record of such analyses for

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operator required by the permit from April 15, 2011 to date. At an estimated cost of \$200.00 per month for April through October 2011 and April through October 2012, a period of 14 months, the amount of \$2,800.00 was saved by not hiring an operator. The total economic benefit assessed by this Order is set at \$4,120.00.

b. Gravity of the Violation. One of the factors the Department considers in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, the Iowa Code authorizes substantial civil penalties. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Because of the importance of the safe drinking water program and self monitoring to the safe drinking water program, the Department assesses \$2,500.00 for this factor, due to multiple violations.

c. Culpability. The facility owner has received numerous contacts by the Department and the JCHD through letters, permits, and site visits concerning monitoring and reporting requirements, public notices, and the requirement to hire a certified operator, all of which have been disregarded. The responsible party has been made fully aware of the responsibilities of a PWS, including requirements for monitoring and reporting, giving public notice, and the requirement to hire a certified operator. Despite Department assistance, this PWS remains non-compliant with the stated rules. This Order assesses the amount of \$2,100.00, due to multiple violations, for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and subrule 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this Order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V. of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191